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In the Supreme Court of the United States

JAMES OBERGEFELL, *et al.*, *Petitioners*,
v.
RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, *et al.*, *Respondents*.

VALERIA TANCO, *et al.*, *Petitioners*,
v.
BILL HASLAM, GOVERNOR OF TENNESSEE, *et al.*, *Respondents*.

APRIL DEBOER, *et al.*, *Petitioners*,
v.
RICK SNYDER, GOVERNOR OF MICHIGAN, *et al.*, *Respondents*.

GREGORY BOURKE, *et al.*, *Petitioners*,
v.
STEVE BESHEAR, GOVERNOR OF KENTUCKY, *et al.*, *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICUS CURIAE* AMERICAN SOCIOLOGICAL ASSOCIATION IN SUPPORT OF PETITIONERS

Carmine D. Boccuzzi, Jr.
(Counsel of Record)
Mark A. Lightner
Grant A. Bermann
Alexandra Eber
CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2000
cboccuzzi@cgsh.com

Counsel for Amicus Curiae

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 5

I. THE SCHOLARLY CONSENSUS IS CLEAR AND CONSISTENT: CHILDREN OF SAME-SEX PARENTS FARE JUST AS WELL AS CHILDREN OF DIFFERENT-SEX PARENTS 5

II. CLAIMS THAT CHILDREN FARE BETTER WITH DIFFERENT-SEX PARENTS THAN WITH SAME-SEX PARENTS ARE UNSUPPORTED BY SOCIAL SCIENCE RESEARCH 13

A. STUDIES EXAMINING DIFFERENT-SEX COUPLES CANNOT BE USED BY MARRIAGE OPPONENTS TO MAKE CLAIMS ABOUT SAME-SEX PARENTS AND DO NOT UNDERMINE THE CONSENSUS 14

B. THE REGNERUS PAPERS DO NOT SUPPORT CONCLUSIONS ABOUT CHILDREN RAISED BY SAME-SEX PARENTS 21

CONCLUSION 27

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INTEREST OF *AMICUS CURIAE*[1]

The American Sociological Association ("ASA") is the national non-profit and non-partisan professional and scholarly association of sociologists in the United States. The ASA was founded in 1905 and has more than 13,000 members, including most sociologists holding doctoral degrees from accredited universities. The ASA publishes nine leading peer-reviewed journals, is committed to and bound by the highest standards of research methodology and objectivity, and is dedicated to advancing sociology as a scientific discipline and profession that serves the public good.

The ASA has a long history of presenting the consensus research findings of social scientists to American courts for their use in evaluating evidence and legal issues, and courts often rely on social science research in their decisions.[2] As part of that mission, the ASA submits this brief to present to this Court the consensus view of social scientists on the effects of same-sex parents on the wellbeing of children.

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[1] Respondents have lodged blanket letters of consent to the filing of amicus briefs with the Clerk of the Court, and Petitioners have consented in writing to the filing of this brief in accordance with Supreme Court Rule 37.3. Pursuant to Rule 37.6, *amicus curiae* states that no counsel for a party authored any part of this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

[2] This Court has often relied on social science research to inform its decisions. *See, e.g.*, *Hall v. Florida*, 134 S. Ct. 1986, 1993 (2014); *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005); *Atkins v. Virginia*, 536 U.S. 304, 318 (2002).

SUMMARY OF ARGUMENT

The clear and consistent social science consensus is that children raised by same-sex parents fare just as well as children raised by different-sex parents. Decades of methodologically sound social science research, including multiple nationally representative studies and expert evidence introduced in courts around the country, confirm that positive child wellbeing is the product of stability in the relationship between the two parents, stability in the relationship between the parents and the child, and sufficient parental socioeconomic resources. The wellbeing of children does not depend on the sex or sexual orientation of their parents. Unsurprisingly, the courts below recognized this fact.[3]

Notwithstanding the social science consensus, many opponents of marriage rights for same-sex couples (the "Marriage Opponents"), including *amici* that filed briefs below, continue to support laws that deny marriage or limit the recognition of marriage to same-sex couples (collectively, the "Marriage Bans") based on unfounded assertions that children fare better with different-sex parents than with same-sex parents. They contend that same-sex parents produce worse

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[3] *DeBoer v. Snyder*, 772 F.3d 388, 405 (6th Cir. 2014) ("[G]ay couples, no less than straight couples, are capable of raising children and providing stable families for them. The quality of such relationships, and the capacity to raise children within them, turns not on sexual orientation but on individual choices and individual commitment."); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 770-71 (E.D. Mich. 2014) (rejecting the assertion that children raised by same-sex parents fare worse than those raised by different-sex parents).

child outcomes—either because such families lack both a male and female parent, or because both parents are not the biological parents of their children. Marriage Opponents also claim that social science studies support this assertion.

The studies cited by Marriage Opponents, however, do not and cannot serve as the basis for any conclusion about same-sex parents and their children. Nor do they undermine the social science consensus that children fare just as well with same-sex parents. To the contrary, many of the studies show that stability improves child outcomes. This confirms that marriage for same-sex couples is likely to improve the wellbeing of the more than 200,000 children in the United States living with same-sex parents,[4] many of whom are

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[4] Over 200,000 children live in same-sex couple households based on the U.S. Census Bureau's American Community Survey. *See* Krista K. Payne, *Demographic Profile of Same-Sex Couple Households with Minor Children, 2012*, National Center for Family & Marriage Research (FP-14-03), 1 (2014), http://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/FP-14-03_DemoSSCoupleHH.pdf; Gary J. Gates, *LGBT Parenting in the United States*, The Williams Institute, 1 (Feb. 2013), http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf. More recent data from the U.S. Census Bureau's American Community Survey, however, suggests that the number is in fact higher, at approximately 250,000 children. *See American Community Survey Data on Same Sex Couples (2013)*, United States Census Bureau, *available at* https://www.census.gov/hhes/samesex/files/ssex-tables-2013.xlsx. In either case, this number does not include the over one million children living with one parent who identifies as gay, lesbian, or bisexual. Gary J. Gates, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey*, The

currently deprived of the enhanced stability that marriage provides.

The research presented in this brief articulates all of these points in great detail, and it demonstrates that promoting the wellbeing of children is neither substantially nor rationally related to the Marriage Bans because the scientific evidence shows that same-sex parents are equally capable of raising children.[5] When the social science evidence is exhaustively examined—which the ASA has done—the facts demonstrate that children fare just as well when raised by same-sex parents as when raised by different-sex parents. Unsubstantiated fears about children of same-

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Williams Institute, 1 (Oct. 2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-families-nhis-sep-2014.pdf.

[5] The Marriage Bans in no way affect whether children will be raised by same-sex or different-sex parents. They do not encourage gay and lesbian individuals to enter into different-sex marriages, nor do they deter such individuals from having children within same-sex relationships. Various courts have made this point when assessing the constitutionality of the Marriage Bans. *See, e.g.*, *Bostic v. Schaefer*, 760 F.3d 352, 384 (4th Cir. 2014) ("There is absolutely no reason to suspect that prohibiting same-sex couples from marrying and refusing to recognize their out-of-state marriages will cause same-sex couples to raise fewer children or impel married opposite-sex couples to raise more children."); *Kitchen v. Herbert*, 755 F.3d 1193, 1214 (10th Cir. 2014) ("Although cohabitating same-sex couples are prohibited from jointly adopting children under Utah law as a result of the same-sex marriage ban . . ., the record shows that nearly 3,000 Utah children are being raised by same-sex couples. Thus childrearing, a liberty closely related to the right to marry, is one exercised by same-sex and opposite-sex couples alike, as well as by single individuals.").

sex parents do not overcome these facts and do not justify upholding the Marriage Bans.

ARGUMENT

I. THE SCHOLARLY CONSENSUS IS CLEAR AND CONSISTENT: CHILDREN OF SAME-SEX PARENTS FARE JUST AS WELL AS CHILDREN OF DIFFERENT-SEX PARENTS

The clear and consistent social science consensus is that children raised by same-sex parents fare just as well as children raised by different-sex parents. Numerous credible and methodologically sound social science studies, including several employing nationally representative samples, form the basis of this consensus.[6] These studies reveal that children raised by same-sex parents fare just as well as children raised by different-sex parents across a wide spectrum of factors used by social scientists to measure child wellbeing. These factors include academic performance and cognitive development, social development, psychological health, early sexual activity, and substance abuse and behavioral problems.

Academic Performance and Cognitive Development

Social science research confirms that the academic performance of children raised by same-sex parents is

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[6] Nationally representative studies are useful to understand child wellbeing in same-sex parent households. Nonetheless, a significant amount of social science research is based on qualitative or convenience samples, and such samples are appropriate when there are subsamples that are hard to capture in large data collections or on topics that require intensive interviewing to advance the understanding of an issue.

indistinguishable from that of children raised by different-sex parents. A leading study by Daniel Potter that was based on nationally representative, longitudinal data found no significant difference in academic achievement between children of same-sex parents and children of different-sex parents.[7] *See* Daniel Potter, *Same-Sex Parent Families and Children's Academic Achievement,* 74 Journal of Marriage & Family 556 (June 2012). Similarly, another leading study by sociologists Alicia Fedewa and Teresa Clark employed nationally representative data, examined the academic achievement of first-grade children, and reported no significant differences in academic achievement between children raised by same-sex parents and children raised by different-sex parents. *See* Alicia L. Fedewa & Teresa P. Clark, *Parent Practices and Home-School Partnerships: A Differential Effect for Children with Same-Sex Coupled Parents?*, 5 Journal of GLBT Family Studies 312 (2009); *see also* Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 Demography 755 (Aug. 2010) (demonstrating that children of residentially stable same-sex parents are as likely to make normal progress through school as children from residentially stable different-sex married parents); Douglas W. Allen et al., *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*, 50 Demography 955 (June 2013) (confirming similar results of academic

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[7] Unlike cross-sectional studies, which compare different individuals at one point in time (*i.e.*, a snapshot), longitudinal studies allow assessments of family living circumstances over the course of the child's life.

performance when comparing children of residentially stable same-sex parents with children of residentially stable different-sex married parents).[8] The same pattern holds true among older children. For example, in another nationally representative study, social scientists found that grade point average levels were similar among adolescents living with same-sex and different-sex parents. *See* Jennifer L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 Child Development 1886 (Dec. 2004).

In an attempt to cast doubt on these conclusions, Marriage Opponents sometimes mischaracterize a 2013 paper written by Douglas Allen that uses Canadian data. *See* Douglas W. Allen, *High School Graduation Rates Among Children of Same-Sex Households*, 11 Review of Economics of the Household 635 (Sept. 2013), http://link.springer.com/article/10.1007%2Fs11150-013-9220-y. Allen purports to find that high school graduation rates are lower for children raised by same-sex parents than for children raised by different-sex parents. But no information is available about the family structures in which the children lived for the majority of their educational careers, and when Allen actually looked at children who were living with same-

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[8] Marriage Opponents often cite this paper for the assertion that children of same-sex parents have poorer academic performance than children of different-sex parents. However, Allen et al.'s paper expands the sample studied to include children living in a same-sex couple household at the time of the Census but who were not necessarily living with this family during their school years. Thus, Allen et al. cannot draw conclusions about the impact of being raised in a same-sex parent household. *See* Michael J. Rosenfeld, *Reply to Allen et al.*, 50 Demography 963 (June 2013).

sex parent families for five years and controlled for parental marital status and education levels, he found that there were no differences at all. *Id.* at 639 n.10. *See also* Transcript of Record at 128-29, *DeBoer v. Snyder*, No. 12-10285 (E.D. Mich. Mar. 13, 2014), ECF No. 148 (Allen accepting that his "report finds no statistically significant difference in graduation rates when you control for parental education and marital status and when you do control for five years of residential stability"). Allen's paper does nothing to undermine the social science consensus.

Social science research also confirms that children raised by same-sex parents and children raised by different-sex parents show similar levels of cognitive development. *See* Justin A. Lavner et al., *Can Gay and Lesbian Parents Promote Healthy Development in High-Risk Children Adopted from Foster Care?*, 82 American Journal of Orthopsychiatry 465 (2012).

Social Development

Social science research confirms that social development of children raised by same-sex parents is equivalent to that of children raised by different-sex parents. Analysis of nationally representative data reveals no differences in social adjustment depending on whether a child was raised by same-sex or different-sex parents. *See* Fedewa & Clark at 312. Moreover, nationally representative studies of adolescents find that the number, support, and quality of peer relationships and friendships are similar for teens raised by female same-sex parents and those raised by different-sex parents. *See* Jennifer L. Wainright & Charlotte J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44

Developmental Psychology 117 (2008); *see also* Fiona Tasker, *Lesbian Mothers, Gay Fathers and Their Children: A Review*, 26 Developmental and Behavioral Pediatrics 224 (June 2005) (discussing studies that find that children of same-sex parents experience psychosocial development outcomes similar to those experienced by children of different-sex parents).

Mental Health

Social science studies also confirm that children of same-sex parents are just as psychologically healthy as children of different-sex parents. According to a nationally representative study, adolescents raised by same-sex and different-sex parents report similar levels of self-esteem and depression. *See* Wainright et al. at 1886. Other reliable studies corroborate these results. *See* Loes van Gelderen et al., *Quality of Life of Adolescents Raised from Birth by Lesbian Mothers: The US National Longitudinal Family Study*, 33 Journal of Developmental & Behavioral Pediatrics 1, 1 (Jan. 2012) (concluding that "[a]dolescent offspring in planned lesbian families do not show differences in [quality of life] when compared with a matched group of adolescents reared in heterosexual families"). Recent research on young children shows that the ability of adopted children to externalize and internalize behaviors does not depend on whether they are raised in male same-sex, female same-sex, or different-sex parent families. *See* Abbie E. Goldberg & JuliAnna Z. Smith, *Predictors of Psychological Adjustment in Early Placed Adopted Children with Lesbian, Gay, and Heterosexual Parents*, 27 Journal of Family Psychology 431 (2013). Similarly, studies reveal no greater levels of anxiety or attention deficit disorder among teenagers

raised by same-sex parents than among those raised by different-sex parents. *See* Nanette K. Gartrell & Henny Bos, *US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents*, 126 Pediatrics 28 (2010), *available at* http://pediatrics.aappublications.org/content/early/2010/06/07/peds.2009-3153.full.pdf+html.[9]

Marriage Opponents may cite two recently published papers by sociologist Paul Sullins, which purport to show that school-age children of same-sex parents have high rates of attention-deficit hyperactivity disorder and emotional problems. *See* D. Paul Sullins, *Child Attention-Deficit Hyperactivity Disorder (ADHD) in Same-Sex Parent Families in the United States: Prevalence and Comorbidities*, 6 British Journal of Medicine & Medical Research 987 (Feb. 2015); D. Paul Sullins, *Emotional Problems Among Children with Same-sex Parents: Difference by Definition*, 7 British Journal of Education, Society & Behavioural Science 100 (Feb. 2015). These two papers in no way undermine the decades of methodologically sound studies reflecting the consensus view discussed

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[9] *See also* Rachel H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 Applied Developmental Science 164 (2010) (reporting similar findings); Scott Ryan, *Parent-Child Interaction Styles Between Gay and Lesbian Parents and Their Adopted Children*, 3 Journal of GLBT Family Studies 105 (2007) (same); Stephen Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 Journal of GLBT Family Studies 43 (2005) (same).

herein.[10] The two papers fail to account for family stability—the length of time the children spent residing with their same-sex or different-sex parents, and their family histories. The papers also ignored any family transitions for children of same-sex parents that occurred prior to the interview (this includes changes in family arrangements prior to a child's living with same-sex parents), which paints an incomplete picture of a child's family experiences. In fact, one paper contains no measure of family stability whatsoever (or transitions for same-sex parents), and the other falsely equates housing status (renting versus owning a home, which only measures socioeconomic means) with family stability. By failing to account for changes that may have occurred prior to children joining a same-sex parent family, the papers provide no basis to extrapolate about the wellbeing of children who are, in fact, raised by same-sex parents in stable households.

Early Sexual Activity

Social science studies also demonstrate that teenagers raised by same-sex parents and those raised by different-sex parents engage in similar levels of teenage sexual activity. For instance, nationally representative studies show that similar proportions of teenagers raised by same-sex parents and by different-sex parents have had sexual intercourse or a romantic

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[10] The Sullins papers failed to undergo a rigorous review by established family scholars, which would take months to complete and be required to undermine decades worth of methodically sound social science research. In fact, one paper was accepted for publication sixteen calendar days after submission (this period spanned the academic winter break and holiday period).

relationship. *See* Charlotte J. Patterson & Jennifer L. Wainright, *Adolescents with Same-Sex Parents: Findings from the National Longitudinal Study of Adolescent Health, in Adoption by Lesbians and Gay Men: A New Dimension in Family Diversity* (David M. Brodzinsky & Adam Pertman eds., 2012). One study found that reports by 17-year-olds raised by lesbian mothers of their sexual behavior indicate that the age at which they first engaged in sexual intercourse was slightly older than those in a gender- and age-matched national sample of children raised by different-sex parents. *See* Nanette K. Gartrell et al., *New Trends in Same-Sex Sexual Contact for American Adolescents?*, 41 Archives of Sexual Behavior 5 (2011).

Substance Abuse and Behavioral Problems

Social science studies confirm that children of same-sex parents are no more likely to abuse substances than children of different-sex parents. A nationally representative sample of adolescents living with female, same-sex parents reveals that the adolescents are similar to their counterparts raised by different-sex parents in terms of frequency of and problems with substance use (*i.e.*, tobacco, alcohol, and marijuana) and delinquent behavior. *See* Jennifer L. Wainright & Charlotte J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 Journal of Family Psychology 526 (2006). Furthermore, children of different-sex and same-sex parents report similar levels of problematic, rule-breaking, and inappropriately aggressive behaviors. *See* Gartrell & Bos.

* * *

The overwhelming body of social science research confirms that a child's wellbeing is not dependent on whether the child's parents are of the same or different sex.[11] Instead, the consensus is that the key factors affecting child wellbeing are stable family environments and sufficient parental socioeconomic resources, neither of which is related to the sex or sexual orientation of a child's parents. *See* Rand D. Conger et al., *Socioeconomic Status, Family Processes, and Individual Development*, 72 Journal of Marriage & Family 685 (June 2010). This research indicates that we should encourage stable and financially secure families—including same-sex parent families—rather than exclude the hundreds of thousands of children living with same-sex couples from the stability and economic security that marriage provides.

II. CLAIMS THAT CHILDREN FARE BETTER WITH DIFFERENT-SEX PARENTS THAN WITH SAME-SEX PARENTS ARE UNSUPPORTED BY SOCIAL SCIENCE RESEARCH

Claims that children fare better with different-sex parents than with same-sex parents are unsupported by existing social science research and are incorrect for the following two general reasons. *First*, almost none

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[11] Some critics make near-blanket dismissals of the studies underlying the social science research consensus. *See, e.g.*, Loren Marks, *Same-Sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting*, 41 Social Science Research 735 (2012). The ASA's review of the studies confirms that they are methodologically sound and conform to the highest standards of social science research.

of the studies cited by Marriage Opponents purport to examine same-sex parents or their children. Accordingly, these studies cannot be used to draw conclusions about the outcomes of children raised by same-sex parents. *Second*, the few studies cited by Marriage Opponents that do purport to examine children of same-sex parents have been discredited, including one of the primary studies offered by Marriage Opponents in the U.S. District Court for the Eastern District of Michigan below. In sum, the studies relied upon by Marriage Opponents do not and cannot change the social science consensus.

A. STUDIES EXAMINING DIFFERENT-SEX COUPLES CANNOT BE USED BY MARRIAGE OPPONENTS TO MAKE CLAIMS ABOUT SAME-SEX PARENTS AND DO NOT UNDERMINE THE CONSENSUS

Studies analyzing different-sex parents—whether they analyze adoptive parents, stepparents, divorced parents, or single parents—cannot be used by Marriage Opponents to speculate about the wellbeing of children of same-sex parents because those studies do not examine same-sex parents or their children. Instead, these studies show that parental stability and higher parental socioeconomic resources—not the sex or sexual orientation of a child's parents—are the key drivers of positive child outcomes.

Studies on Adoptive Families

Studies examining children of adoptive parents and children conceived by donor sperm cannot be used to argue that children are raised best by biological

parents. *See, e.g.*, Elizabeth Marquardt et al., Institute for American Values, *My Daddy's Name is Donor: A New Study of Young Adults Conceived Through Sperm Donation* (2010).[12] There is no basis in social science research for such a claim. In fact, studies indicate that children raised in adoptive families since infancy or in families utilizing assisted reproduction techniques fare just as well as other children. *See* Gartrell & Bos at 33-34 (showing that "adolescents who have been raised since birth in planned lesbian families demonstrate healthy psychological adjustment" and that they "demonstrated higher levels of social, school/academic, and total competence than gender-matched normative samples of American teenagers"); Brent Miller et al., *Comparisons of Adopted and Non-Adopted Adolescents in a Large, Nationally Representative Sample*, 71 Child Development 1458 (2000) (finding little difference between adoptees and non-adoptees who live in two-parent families). The recent 2013 study by Goldberg and Smith, cited above, corroborates this finding. That study examined 120 families who have adopted children younger than 18 months old. Utilizing longitudinal data, the study reported that adopted children across families with male same-sex, female same-sex, and different-sex parents fare equally well in terms of externalizing and internalizing behaviors, which are well established factors for measuring child wellbeing. *See* Goldberg & Smith.

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[12] It is hard to see the relevance of reports about the significance of biological parenting on the issue of marriage rights for same-sex couples given that both adoption and assisted reproduction are widely used by different-sex couples, as reflected in the very sources often cited in support of the Marriage Bans.

Studies on Stepparents, Divorced Parents, or Single Parents

Studies examining the impact that stepparents, divorced parents, and single parents have on child wellbeing cannot be used to claim that being raised by two biological parents is better for children. *First*, these studies do not examine same-sex parents or their impact on child wellbeing. *See, e.g.*, Kristin Anderson Moore et al., *Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do About It?*, Child Trends 1-2, 6 (June 2002), http://www.childtrends.org/wp-content/uploads/2013/03/MarriageRB602.pdf (comparing the wellbeing of children raised by stepparents and single parents to that of children raised by stable, two parent families); Sara McLanahan & Gary Sandefur, *Growing Up with a Single Parent* 38 (1994) (comparing "disrupted" families with "intact" families, but nowhere discussing same-sex parents); Marilyn Coleman et al., *Reinvestigating Remarriage: Another Decade of Progress*, 62 Journal of Marriage & Family 1288 (2000) (comparing stepparents to non-divorced parents, but not addressing same-sex parents); Mark V. Flinn et al., *Growth and Fluctuating Asymmetry of Stepchildren*, 20 Evolutionary Human Behavior 465 (1999) (analyzing the wellbeing of children raised by stepfathers, but not addressing same-sex parents); Nicholas H. Wolfinger, *Understanding the Divorce Cycle: The Children of Divorce in Their Own Marriages* (2005) (analyzing the impact of divorce, but not addressing same-sex parents). Accordingly, these studies do not bear on same-sex parenting.

Second, to the extent studies show that children of stepparents, divorced parents, or single parents experience, on average, not as positive outcomes as children raised by intact biological parent couples, it is due to the disruption caused by divorce or the introduction of a new parent into the family. *See, e.g.*, Moore et al. at 1 ("Divorce is linked to academic and behavior problems among children, including depression, antisocial behavior, impulsive/hyperactive behavior, and school behavior problems. Mental health problems linked to marital disruption have also been identified among young adults."). These studies do not indicate that the negative outcomes are at all related to the fact that the stepparent is not biologically related to the child. Accordingly, any contention that these studies about single parents, stepparents, or divorced parents can be used to draw conclusions about same-sex parents is wrong.

Finally, and critically, the authors of one of the studies cited most frequently by Marriage Opponents, including by some *amici* below—the Child Trends study by Kristin Anderson Moore, et al.—have publicly rebuked Marriage Opponents for distorting their findings. Before this Court considered *Windsor* and *Perry*, the authors expressly disclaimed the misuse of their study by the Bipartisan Legal Advisory Group, which defended the Defense of Marriage Act (DOMA), explaining that "no conclusions can be drawn from this research about the well-being of children raised by same-sex parents or adoptive parents." *See* Moore et al. Even if this study were applicable to same-sex parents, the authors stated that "when researchers have compared marriage to cohabitation, they have found that marriage is associated with better outcomes

for children." *Id.* at 2. Far from undermining the case for same-sex marriage, this conclusion demonstrates that recognition of marriage rights of same-sex couples would improve the wellbeing of children being raised by currently unmarried same-sex parents. *See also* Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 Journal of Marriage & Family 876 (Nov. 2003) (noting that marriage provides enhanced socioeconomic resources to families, improving child wellbeing outcomes); Pamela J. Smock & Wendy D. Manning, *Living Together Unmarried in the United States: Demographic Perspectives and Implications for Family Policy*, 26 Law & Policy 87, 94 (2004) (discussing the role of marriage in contributing to the stability of a family).

Studies on Parenting Styles in Families with Different-Sex Parents

Studies examining the parental roles of mothers and fathers within the context of different-sex parent families cannot be used to argue that child wellbeing depends on having both a male and female parent. *See, e.g.*, Charles A. Nelson & Michelle Bosquet, *Neurobiology of Fetal and Infant Development: Implications for Infant Mental Health, in Handbook of Infant Mental Health* 37-59 (C.H. Zeanah Jr. ed., 2d ed. 2000); Eleanor Maccoby, *The Two Sexes* 266-68 (1998); Paul R. Amato & Fernando Rivera, *Paternal Involvement and Children's Behavior Problems*, 61 Journal of Marriage & Family 375 (May 1999); Shmuel Shulman & Moshe M. Klein, *Distinctive Role of the Father in Adolescent Separation-Individuation*, 62 New

Directions for Child & Adolescent Development 41, 53 (1993).

First, studies about the parenting and disciplinary practices of different-sex parents simply do not examine same-sex parents. Accordingly, they cannot be used to draw any conclusions about same-sex parents or their children, let alone specific conclusions about the purported parenting styles of same-sex parents and the supposed effects of those styles on children.

Second, social science research shows that there are a range of parenting styles and that children do not need their parents to adhere to sex-stereotyped parenting styles to be well adjusted. *See* Paul R. Amato & Frieda Fowler, *Parenting Practices, Child Adjustment, and Family Diversity*, 64 Journal of Marriage & Family 703, 714 (2002) ("When parents spend time with children, help with homework, talk about problems, provide encouragement, and show affection, children do well.").

Third, even if research showed that parents needed to perform different parenting roles to raise well-adjusted children (which it does not), nothing in the social science literature indicates that same-sex couples are incapable of performing such roles. *See* David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood & Marriage Are Indispensable for the Good of Children & Society* 147 (1996) (noting that among same-sex parents, one partner commonly fills the "male-instrumental role while the other fills the female-expressive role" in rearing their children).

Fourth, arguments based on rigid gender roles should be rejected outright, and there is no basis to rely on "outdated misconceptions" and "loose-fitting characterizations" regarding gender. *See Craig v. Boren*, 429 U.S. 190, 198–99 (1976); *see also Price Waterhouse v. Hopkins*, 490 U.S. 228, 251, 255-56 (1989) ("[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group[.]").

Finally, studies examining the role of absentee fathers, *see, e.g.*, Popenoe at 146, cannot be used to claim that, within the context of same-sex parents, having a male and female parent is necessary to a child's wellbeing. In fact, the research showing the negative impact of absentee fathers, such as David Popenoe's, has nothing to do with the unique contributions of fathers, but rather with the loss of a parental relationship more generally. *Id.* at 139 ("Much of what fathers contribute to child development, of course, is simply the result of being a second adult in the home. Other things being equal, two adults are far better than one at raising children. As the distinguished developmental psychologist Urie Bronfenbrenner has noted, the quality of interaction between principal caregiver and child depends heavily on the availability and involvement of another adult, a *third party* who assists, encourages, spells off, gives status to, and expresses admiration and affection for the person caring for and engaging in joint activity with the child." (internal quotations omitted)). Children being raised by same-sex parents would be raised by two parents. Therefore, this research does not apply to them.

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In sum, studies examining child outcomes within the context of different-sex couples do not address the impact of same-sex parents on child wellbeing. Accordingly, they do not undermine the social science consensus, which is supported by the most reliable studies available, that children raised by same-sex parents fare just as well as children raised by different-sex parents across a broad spectrum of factors used by social scientists to measure child wellbeing.

B. THE REGNERUS PAPERS DO NOT SUPPORT CONCLUSIONS ABOUT CHILDREN RAISED BY SAME-SEX PARENTS

Over the last two years, Marriage Opponents have relied heavily on two papers by Mark Regnerus, referred to herein as "Regnerus 2012a" and "Regnerus 2012b," to support Marriage Bans in both the United States and around the world. These papers, however, cannot be used to argue that children of same-sex parents fare worse than children of different-sex parents. *See* Mark Regnerus, *How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study*, 41 Social Science Research 752 (2012) ("Regnerus 2012a"); Mark Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children: Answering Critics of the New Family Structures Study with Additional Analyses*, 41 Social Science Research 1367 (2012) ("Regnerus 2012b"). Regnerus 2012a claimed that children who said one of their parents had engaged in a same-sex romantic relationship at some

point during their childhood experienced inferior outcomes. Although this paper never actually studied children raised by same-sex parents, Marriage Opponents often extrapolate from this limited study that children raised by same-sex parents experience outcomes inferior to those of children raised by different-sex parents. Over one hundred fellow scientists publicly criticized Regnerus for his study's failings. Regnerus then published a second paper, Regnerus 2012b, in which he attempted to remedy the fact that Regnerus 2012a did not analyze whether the children had actually lived with the parent who had at some point engaged in a same-sex romantic relationship. As discussed below, both papers are flawed, and neither paper undermines the social science consensus.

The Regnerus 2012a Paper Offers No Basis for Conclusions About Same-Sex Parents

The Regnerus 2012a paper offers no basis for conclusions about same-sex parents for the following reasons. *First*, Regnerus 2012a does not examine children born or adopted into same-sex parent families, but instead examines children who, from the time they were born until they were 18 or moved out, had a parent who at some time had "a same-sex romantic relationship." *See* Regnerus 2012a at 756. Regnerus noted that "just under half" of the individuals characterized by him as children of 'lesbian mothers' and 'gay fathers' were the offspring of failed different-sex marriages whose parent subsequently had a same-sex relationship. *Id.* at 757. In other words, the study did not analyze children of two same-sex parents.

Second, Regnerus 2012a compared (i) the children of parents who at some point had a "same-sex romantic relationship," and who had experienced a family dissolution or single motherhood, to (ii) children raised by two biological, married different-sex parents. The study also stripped away all divorced, single, and stepparent families from the different-sex parent group, leaving only stable, married, different-sex parent families as the comparison. *Id.* (the comparison group consisted of individuals who "[l]ived in intact biological famil[ies] (with mother and father) from 0 to 18, and parents are still married at present"). It was hardly surprising that this select different-sex parent group had better outcomes given that stability, as noted above, is a key predictor of child wellbeing. By removing divorced, single, and step-parent families from the different-sex parent group, the Regnerus 2012a paper makes inappropriate apples-to-oranges comparisons.

Third, the Regnerus 2012a paper failed to consider whether the children lived with, or were raised by, the parent who was at some point apparently involved in "a romantic relationship with someone of the same sex" and that same-sex partner. *Id.* at 756. Instead, Regnerus categorized children as raised by a parent in a same-sex relationship regardless of whether they were in fact raised by the parent and the parent's same-sex romantic partner, and regardless of the amount of time that they spent under that parent's care. In fact, Regnerus himself acknowledged that there were "only [a] handful of cases where there was a nonstop presence of mom and her partner in the household the entire childhood of the respondent." *See* Transcript of Record at 55, *DeBoer v. Snyder*, No. 12-

10285 (E.D. Mich. Apr. 6, 2014), ECF No. 165. Nonetheless, so long as an adult child believed that he or she had *had* a parent who at some point had a relationship with someone of the same sex, then Regnerus mischaracterized that child as having been raised by a parent in a same-sex relationship.

Finally, Regnerus 2012a failed to account for the fact that negative outcomes may have been caused by other childhood events or events later in the individual's adult life, particularly given that the vast majority of the outcomes measured (thirty-seven of forty) were adult and not childhood outcomes. Regnerus himself recognizes that the survey data on which he based his paper—the New Family Structures Study—"is poised to address [questions] about the lives of young adults between the ages of 18 and 39, but not about children or adolescents." Regnerus 2012a at 755. Factors other than having same-sex parents are likely to explain these outcomes in the Regnerus 2012a study. Regnerus himself concedes that "I am thus not suggesting that growing up with a lesbian mother or gay father causes suboptimal outcomes *because of* the sexual orientation or sexual behavior of the parent." *Id.* at 766 (emphasis in original).

In sum, Regnerus 2012a conflates children raised by same-sex parents with people who reportedly had a parent who had "a romantic relationship with someone of the same sex" at some point. By referring to such individuals as children of "lesbian mothers" or "gay fathers," the paper obscures the fact that it did not examine children raised by two same-sex parents.

The "Re-Stated" Regnerus 2012b Paper Offers No Basis for Conclusions About Same-Sex Parents

A group of over one hundred social scientists signed an article faulting the Regnerus 2012a paper for failing to study children raised by same-sex parents and to control for family structure and family instability. *See* Gary J. Gates et al., *Letter to the Editor and Advisory Editors of Social Science Research*, 41 Social Science Research 1350 (2012). The article criticized Regnerus 2012a's failure to "distinguish between the impact of having a parent who has had a continuous same-sex relationship from the impact of having same-sex parents who broke-up from the impact of living in a same sex stepfamily from the impact of living with a single parent who may have dated a same-sex partner." *Id.*; *see also* Darren E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, 41 Social Science Research 1346 (2012) (his internal audit critiquing Regnerus 2012a in the very journal in which Regnerus's article was published, and going so far as to state that Regnerus 2012a should not have been published); Andrew J. Perrin, *Are Children of Parents Who Had Same-Sex Relationships Disadvantaged? A Scientific Evaluation of the No-Differences Hypothesis*, 17 Journal of Gay & Lesbian Mental Health 327 (2013) (elaborating on the shortcomings of Regnerus 2012a).[13] Regnerus acknowledged the merit of these scholarly

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[13] The U.S. District Court for the Eastern District of Michigan recently evaluated Regnerus's study, finding that it was "flawed on its face," *see DeBoer v. Snyder*, 973 F. Supp. 2d 757, 766 (E.D. Mich. 2014), and finding Regnerus's testimony "entirely unbelievable and not worthy of serious consideration," *id.*

critiques and published a second analysis of the data, which is referred to as Regnerus 2012b. Regnerus 2012b attempted to remedy the fact that Regnerus 2012a did not analyze whether the children had actually lived with the parent who had at some point been "romantically involved" with someone of the same sex. But Regnerus 2012b does not remedy Regnerus 2012a's shortcomings.

First, Regnerus 2012b maintains the same flawed and extremely broad definition of what constitutes "lesbian mothers" and "gay fathers"—that is, a mother or father who ever had a romantic relationship with someone of the same-sex during the period from the birth of the child until the child turned eighteen (or left home to be on their own). Regnerus 2012b at 1368. Accordingly, Regnerus 2012b continues to ignore stability as the primary factor in child outcomes. *Second*, Regnerus 2012b fails to account for the duration of time spent with a mother and the same-sex partner with whom she was "romantically involved." *See id.* at 1372. Only two of the eighty-five children who at some point lived with a mother who was "romantically involved" with another woman reported that they did so for the entire duration of their childhood. *Id.* at 1370. *Finally*, Regnerus 2012b does not address the wellbeing of children raised by same-sex parents because Regnerus did not determine whether the recorded childhood experiences occurred while the mother lived with a same-sex partner *or* during another family living arrangement.

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If any conclusion can be reached from Regnerus 2012a and 2012b, it is that family stability is predictive of child wellbeing. Indeed, Regnerus noted that family structure (for instance, whether the family has a single parent or two parents) matters significantly to child outcomes. *See* Regnerus 2012a at 761.

CONCLUSION

The clear and consistent social science consensus is that children raised by same-sex parents fare just as well as children of different-sex parents. This consensus holds true across a wide range of child outcome indicators and is supported by numerous reliable studies, including those using nationally representative data. The research supports the conclusion that the extension of marriage rights to same-sex couples has the potential to improve child wellbeing insofar as the institution of marriage may provide social and legal support to families and enhance family stability, which are key drivers of positive child outcomes. Claims by Marriage Opponents about the wellbeing of children are unsupported by any social science study published to date. Their claims neither undermine the social science consensus nor establish a basis for upholding the Marriage Bans.

Respectfully submitted,

Carmine D. Boccuzzi, Jr. (Counsel of Record)
Mark A. Lightner
Grant A. Bermann
Alexandra Eber
CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2000
cboccuzzi@cgsh.com

Counsel for Amicus Curiae
American Sociological Association

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